

COPY

FILED

00 MAR -9 PM 4:17

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

1 FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.  
2 Charles E. Lipsey  
Edna Vassilovski  
3 1300 I Street, N.W., Suite 700  
Washington, D.C. 20005-3315  
4 Telephone: (202) 408-4000

5 Thomas W. Banks (SBN 195006)  
John W. Burns (SBN 190031)  
6 700 Hansen Way  
Palo Alto, CA 94304  
7 Telephone: (650) 849-6600

8 WRIGHT & L'ESTRANGE  
John H. L'Estrange, Jr. (SBN 49594)  
9 Joseph T. Ergastolo (SNB 137807)  
Imperial Bank Tower, Suite 1550  
10 701 "B" Street  
San Diego, CA 92101-8103  
11 Telephone: (619) 231-4844

Attorneys for Defendant VYSIS, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

12			
13			
14			
15	GEN-PROBE, INCORPORATED,	)	Case No.: 99CV 2668H (AJB)
16		)	
17	Plaintiff,	)	NOTICE OF MOTION AND
18		)	MOTION BY DEFENDANT VYSIS, INC.
19		)	FOR A STAY OF PROCEEDINGS AND,
20		)	ALTERNATIVELY, TO DISMISS COUNT
21		)	FOUR OF THE FIRST AMENDED
22	v.	)	COMPLAINT UNDER FEDERAL RULE OF
23		)	CIVIL PROCEDURE § 12(b)(6)
24	VYSIS, INC.,	)	
25		)	
26	Defendant.	)	Date: April 10, 2000
27		)	Time: 10:30, a.m.
28		)	Place: Courtroom 1

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 10, 2000, at 10:30 a.m., or as soon thereafter as this matter may be heard before the Honorable Marilyn Huff in Courtroom 1 of the above-entitled Court, located at 940 Front Street, San Diego, defendant Vysis, Inc. ("Vysis") will, and hereby does, move the Court for an order staying the above-captioned action, with the exception that plaintiff be required to

RECEIVED 906 E 560

1 timely respond to the first set of interrogatories served by Vysis on  
2 January 26, 2000, pending completion by the United States Patent and  
3 Trademark Office ("PTO") of the reissue proceeding for United States  
4 Patent No. 5,750,338 ("the '338 patent"), the patent in suit in this  
5 action. The application for reissue of the '338 patent was filed  
6 March 8, 2000, in the PTO.

7 Alternatively, defendant Vysis will, and hereby does, move the  
8 Court under Federal Rule of Civil Procedure 12(b)(6) for an order  
9 dismissing Count Four of the First Amended Complaint in this action,  
10 which purports to state a claim for violation of California Business  
11 and Professions Code sections 17200 et seq. The grounds for this  
12 alternative motion are that Count Four fails to allege facts which  
13 state a claim upon which relief can be granted.

14 The motion for stay will be based on this notice, the attached  
15 memorandum of points and authorities, and associated exhibits, the  
16 declaration of John H. L'Estrange, Jr., the pleadings, files and  
17 records in this case, and any oral and documentary evidence that may  
18 be presented at the hearing on this motion.

18 / / /  
19 / / /  
20 / / /  
21 / / /  
22 / / /  
23 / / /  
24 / / /  
25 / / /  
26 / / /  
27 / / /  
28 / / /

008050" 906EE560

1 The alternative Rule 12(b)(6) motion to dismiss Count Four will  
2 be based on this notice, the accompanying memorandum of points and  
3 authorities, the pleadings (including the license contract referred  
4 to in the first amended complaint) files and records in this case,  
5 and any oral argument that may be presented at the hearing on this  
6 alternative motion.

7 Respectfully submitted,

8 FINNEGAN HENDERSON FARABOW DUNNER  
& GARRETT, LLP

9 -and-

10 WRIGHT & L'ESTRANGE

11  
12 Dated: March 9, 2000

13 By

*John H. L'Estrange, Jr.*  
14 John H. L'Estrange, Jr.  
15 One of the attorneys for  
16 Defendant Vysis, Inc.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28